

**BEFORE THE LAND USE HEARINGS EXAMINER
CLARK COUNTY, WASHINGTON**

REGARDING THE APPLICATION FOR A)
PRELIMINARY PLAT APPROVAL TO SUBDIVIDE)
APPROXIMATELY 3.08 ACRES INTO 7 SINGLE-)
FAMILY LOTS IN THE R1-6 ZONING DISTRICT)
UNDER DENSITY TRANSFER PROVISIONS IN THE)
UNINCORPORATED CLARK COUNTY, WA.)

FINAL ORDER

LINTZ SUBDIVISION
PLD2004-00073, SEP2004-
00134, WET2004-00029

APPROVED WITH CONDITIONS

INTRODUCTION

The applicant is requesting a preliminary plat approval to subdivide approximately 3.08 acres into 7 lots in the R1-6 Zoning District using the provisions of CCC 40.220.010 (C) (5)(Density Transfer). There is one house and three sheds on the site that will be retained on the proposed Lot 7. The R1-6 Zoning District permits a single-family dwelling on an average minimum lot area of 6,000 square-feet and an average maximum lot size of 8,500 square feet. Except to the north which is designated Mixed Use (MU) and zoned Light Industrial (ML), and is a vacant undeveloped industrial property, all other areas are designated and zoned R1-6. The property is located within the City of Vancouver's urban growth area (UGA). It is situated in an area served by Fire Protection Districts 5, Vancouver School District, Orchards Traffic Impact Fees District, and Parks Improvement District 7. The City of Vancouver provides public sewer and public water services in the area.

Parcel Number(s): Tax Lot 139 (156791), located in the SE ¼ of Section 7, Township 2 North, Range 2 East of the Willamette Meridian.
Area: Approximately 3.08 acres

Applicant/Owner: Edward & Terasue Lintz
6418 NE 58th Street
Vancouver, WA 98661

Comp Plan: Urban Low Density Residential (UL)

Zoning: Single Family Residential District (R1-6)

Applicable Laws: Clark County Code Chapters 40.350 (Transportation), 40.350.020 (Concurrency), 40.380 (Storm Water Drainage and Erosion Control), 40.450 (Wetlands), 15.12 (Fire Code), 40.570.080 (SEPA), 40.220.010 (R1-6), 40.220.010 (C) (5)

(Density Transfer), 40.610 (Impact Fees), 40.370.010 (D), (Sewer Connection, 40.370.020 (D), (Water Connection), 40.540.040 (Land Division), 40.570.080 (C) (3) (k), (Archaeology), 40.310 (Signs)

HEARING AND RECORD

The Public Hearing on this matter was held on November 9, 2004 and the record was kept open until November 30, 2004. A record of all testimony received into the record is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Clark County Department of Community Development.

The Examiner has conducted an unaccompanied site visit prior to the Hearing. The County received following comments prior to the Hearing:

Letters from Al Christenson (Exhibit 13), Darrel and Estrella Marugg and the Law Offices of John Karpinski (Exhibit 15) regarding this application. The letters raise the following issues:

- Traffic on NE 58th Street;
- The impact from the construction of the private driveway that provides access to the site and three other dwellings in the area;
- Potential adverse possession claim against the applicant because a neighbor's cyclone fence is located within the access easement; and,
- Potential impacts to wetland on the property.

Staff's Response to the letters is found Page 3 and 4 of the Staff Report also see the relevant findings below.

Michael Uduk the lead County planner on this application provided an overview of this application and its associated staff report. Two issues were identified in the staff report: potential adverse possession and transportation concerns (sight distance problems). Staff originally recommended denial of this application, because the applicant did not show compliance with the transportation/traffic issue. Staff also identified stormwater as an issue, because no conditions of approval related to stormwater were identified by the County engineer. He added that the applicant has since submitted an application for a road modification, in an attempt to resolve the sight distance issue.

Ken Carlson the County's engineering representative said he has just been reviewing the new proposal submitted by the applicant, but has not yet completed his review. He added that Staff will also, in all probability, want to add conditions of approval related to stormwater. Mr. Carlson asked that the examiner hold the record in this case open until November 19, to allow staff to submit their recommendations.

Brent Davis, County wetland biologist, said that, on Page 7, Finding 3, it should read that the applicant proposes to fill 0.07 acres, not 0.7 acres. He noted that the applicant has submitted Exhibit 20 regarding staff's wetlands concerns; in response, Staff is recommending the

elimination of Condition A-4.

Kurt Stonex, the applicant's representative, said the applicant is requesting the road modification approval; that request has been submitted to the record (Exhibits 24-25). The driveway spacing issue is the code requirement we're struggling with, he said; we have met with the neighbor to the west, asking if we could align his driveway with our road; he declined our offer. There is really only one way to provide access to this site with the existing driveway, he said; our feeling is that our solution to the sight distance issue can be resolved in a workable way, even if the solution is less than ideal. Mr. Stonex requested a week to respond to staff's comments on the roadway modification request.

With respect to the potential adverse possession issue, Mr. Stonex said the applicant is willing to back off and work with the neighbors on this fencing-related issue. Also, we're willing to provide the requested driveway or curb-cut the neighbor is requesting. We have modified our wetland mitigation plan, as Mr. Davis said; we're doing some additional planting which staff has approved.

We have some other comments – corrections – on the staff report; on Page 3, staff comments, under Item E, that the Lintz's constructed their driveway using fill; they didn't do that, it was an existing condition. Page 6, Finding 2, there are some typographical errors, with respect to which lots are interior and which are perimeter. Lots 1-4 do meet the code and the density transfer provisions as proposed; I would request that the last sentence of the paragraph be stricken. On Page 7, second paragraph, it refers to the habitat conservation zone; I believe that should read wetland. With respect to the wetland permitting, we haven't submitted that, but we can; the Corps of Engineers has approved our application for a permit.

With respect to the actual conditions of approval, it's up to you where you add the curb-cut driveway issue to the north of the fence, Mr. Stonex said.

Charles Milbrandd asked about a potential change to the road; the Examiner explained that the issue was whether the applicant could get his road without going through adverse property – apparently he said he showed that on his original drawing. Perhaps I'm misinterpreting that, said Milbrandd. The road needs to shift five feet to the east, to avoid your property, said Mr. Stonex.

Mark Milbrandd of NE 58th said his concern is that there will be a 40-foot road going back there. It's a 40-foot ROW – the paved portion of the road is much narrower, Mr. Carlson replied. The actual road will be 20 feet, curb to curb, said Mr. Carlson, plus five feet for a sidewalk on the left-hand side, heading into the development. My understanding from the engineer is that they have room for this 25-foot road and sidewalk without encroaching on your property. My concern is that the hedge not be affected, Mark Milbrandd continued, noting that he owns two pieces of property there, and plans to build a house on the vacant parcel some time in the future. My concern is that the right-of-way for the county road could force me to move my building envelope back another 25 feet. Mr. Carlson said this will be a private, not a county, road.

On rebuttal Mr. Stonex went through the dimensions in question; the applicant has 40 feet to work with for the access road; the fence line runs seven feet into that 40 feet at its narrowest spot, which leaves us 33 feet. We'll have to shift the road to the east. The Milbrandd's hedges and fences are about 10 feet into the 20-foot easement, so I'm pretty sure we will impact their hedges and fences. There simply isn't enough room to do it any other way. However, their setbacks won't change.

I would encourage the Milbrandds to work directly with Mr. Stonex to resolve any additional questions they may have, said the Examiner, adding that the record on this case will be held open until November 24 or as soon as the applicant responds to Mr. Carlson's review.

Mike Milbrandd asked again about the fate of his hedges; this is the first time I've heard that they're going to get cut, he said, and I would like to know where. Those hedges are 20 feet tall, and completely enclose my place; my concern is that if you butcher one side, I won't have any privacy. As long as there are 25 feet clear, we won't touch your hedges, Mr. Stonex replied. The examiner suggested that Stonex and Milbrandd meet to resolve this issue while the record is open; you can then report to me, and let me know if there is a problem. It was so agreed.

Open Record Period

Exhibit 28: Ken Carlson reported that the applicant has proposed a private cul-de-sac accessing onto NE 58th Street which does not meet the spacing requirements of a 2-lane collector with driveways. This required road modification and Staff Makes findings and Recommendations to approve this road modification. See Transportation Finding 5

Exhibit 29 - Ken Carlson Submitted additional findings requested for transportation and stormwater. These findings are reflected in Transportation Findings 2, 5 and 6 as well as Stormwater Findings 2 and 6 and the conditions of approval related to said findings.

Exhibit 30 - The applicant responded on November 23, 2004 - that the applicant owns a 20' strip and also has an additional 20' access easement for a total of 40' in which to locate the proposed private access road to serve the development. In order to accommodate shifting the road to the east, the applicant will have to remove some existing vegetation and a portion of an existing fence. The existing documents included in the deed history show that the applicant has an existing 20' easement for roadway purposes which covers this area. It is the applicant's understanding that this easement would allow for the removal of obstructions within the easement.¹

The applicant has also reviewed Ken Carlson's 11/10 and 11/15 reports and concurs with the findings and conditions of approval as proposed by Staff.

¹An Email was transmitted to me on 12/3/04, after the record was closed, essentially restating Exhibit 40.

FINDINGS

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. The following issues were either raised by the applicant, addressed by staff in its report, or by agency comments on the application, and the Examiner adopts the following findings with regard to each:

LAND USE:

Zoning - Density Transfer, CCC 40.220.010 (C) (5):

Finding 1

The development site is approximately 3.08 acres. If the proposed development were to occur at the minimum density permitted by the R1-6 zone, then the gross acreage could be divided into 15 lots, with a maximum average lot area of 8,500 square feet. But, if the development were to occur at the maximum density, then the gross acreage could be divided into 22 lots, with a minimum average lot area of approximately 6,000 square feet. The applicant proposes 7 lots with a maximum average lot area of approximately 8,565.71 square feet.

The existing single-family dwelling that will be retained on Lot 7 is exempt from complying with the minimum or maximum average lot area [per CCC 40.200.050 (B), Exceptions to lot size standards for existing lots of record]. Based upon this exception; therefore, staff finds that the proposal could comply with the density in the R1-6 Zoning District.

Under normal circumstances, the proposed development would be required to comply with the development standards shown in Tables 40.220.010-2 and -3. The applicant is using density transfer because the site contains known Category 4 wetland that will be preserved; and CCC 40.220.010 (C) (5) permits the applicant to transfer the density that would otherwise be lost from the wetland areas to the unencumbered land areas on the same site. Therefore, the development will need to comply with the standards shown in Table 40.220.010-4 (Density Transfer).

Table 2: Table 40.220.010-4 (Density Transfer)

Classification	Maximum Density (d.u./acre)	Minimum Useable Lot Area (square feet)	Average Lot Width (feet)	Average Lot Depth (feet)
R1-6	5.8	2,500	40	50

The following requirements of density transfer have been satisfied by this development proposal:

1. All lots could comply with the density transfer standards, which require perimeter lots

to be at least 5,400 square feet each (or 90 percent) of the minimum lot area for the subject parcel. Lots 1-6 are perimeter lots and Lots 2-5 are interior lots and abut a designated wetland buffer; and Lot 7 contains the existing single-family dwelling. Lots 1-4 do meet and density transfer standard. (See condition of approval A-1)

Lot 7 is a half-acre home site with an area of approximately 21,060 square feet, which could be further divided into smaller lots. Therefore, any development proposal on Lot 7 that involves land division shall:

- a. Preclude the use of Residential In-Fill standards, CCC 40.260.110 because Lot 7 was created by Lintz subdivision after October 2, 2002; and,
 - b. Preclude the use of the provisions of CCC 40.200.050 (Exceptions to lot sizes). A note shall be placed on the final plat stating this. (See conditions of approval D-1 and D-2)
2. The minimum lot depth of each lot proposed is 80 percent of the minimum lot depth of the subject parcel; and the minimum lot width is 80 percent of the minimum lot depth of the subject parcel. Therefore, the proposed lots comply with the lot depth requirements of CCC 40.220.010 (C) (5) (b).
 3. Each lot proposed satisfies the lot width standards shown in Table 40.220.010-4.
 4. The density transfer provisions of the code are not being used in conjunction with either the provisions of CCC 40.520.080 (Planned Unit Developments), or CCC 40.260.110, (Residential In-Fill).
 5. A recorded covenant shall be placed on the wetland and buffers from which density is being transferred, prohibiting any future developments of these areas in perpetuity, CCC 40.220.010 (5) (b) (6). (See condition of approval D-3)

Buffer to Industrial Property

Finding 3

The property to the north is zoned light industrial, and the applicant has demonstrated that this development could provide adequate setback and buffering consistent with the applicable sections of the code. Therefore no condition of approval is necessary.

Adverse Possession

Finding 4

John Karpinski, counsel for Darrel and Estrella Marugg wants the county to deny the plat because of potential adverse possession claims. The Prosecuting Attorney's Office had advised in the past that an adverse possession claim is a civil matter that should be resolved in a court of law. State Laws require that if there is an adverse possession claim against a proposed plat, the plat shall not be recorded until the adverse possession claim is resolved. Any adverse possession claim against this development proposal shall be resolved prior to final plat recording.

In a related matter Mr. Karpinski requested and Mr. Stonex agreed at the hearing to provide a curb cut for the northern portion of the Marugg property in order to compensate for the elevated state of the Lintz driveway.

Because the Marugg property fence line runs seven feet into that 40 feet at its narrowest spot, into the applicant's proposed private access road (subject to adverse possession claim), this leaves the applicant with 33 feet for a 20 foot paved width and a 5-foot sidewalk. This requires the applicant to shift the road to the east, as the Marugg's indicated disinterest in contributing their abutting driveway to the common access road. On the other hand the Milbrandds' hedges and fences on the east side of the proposed road are about 10 feet into the 20-foot easement (see pictures 1-3 of Exhibit 25). Milbrandds testified as to their unhappiness with the prospect of having their hedge trimmed or removed. The applicant indicates that he we will impact Milbrandds' hedges and fences, because they cannot meet road standards without that. While there appears to be an adverse claim related to the first seven there is nothing in the record to indicate that the Milbrandds' have a comparable claim.

While the applicant will have to keep the improvements as far west as possible against the Lintz property line or the fence which the neighbor is claiming to and minimize the impact to the hedge damage to the hedge is near certain. I reserve the judgment as to whether the Lintz's existing easement is adequate for them to develop this property. Ultimately this is a question of property rights which can only be addressed in a judicial forum; however, I can require that prior to final plat approval the applicant demonstrate that they are in a legal position to provide a sufficient easement to comply with transportation requirements for a private cul-de-sac access road. (See additional discussion under Public Comments and condition of approval A-2 as well as Transportation Finding 3).

CRITICAL AREAS:

Only major issues that require conditions and/or revisions to the proposed plans to ensure compliance with the requirements of the Wetland Protection Ordinance (CCC 40.450) are discussed in detail below:

Finding 1

Compliance with CCC 40.450 will ensure that the project has no significant environmental impacts to wetlands (see SEPA Determination, p. 14). (See Condition of Approval a-3)

Finding 2

Staff concurs with the June 2003 wetland evaluation report prepared by Environmental Technology Consultants (Exhibit 8); therefore site contains a Category 4 wetland with 50 ft. Type D buffers characterized by an open drainage ditch within a grass field. Clark County Wetland Protection Ordinance (Clark County Code Chapter 13.36) requires wetlands and wetland buffers to be maintained in a natural state. Refer to the Conservation Covenant recorded in conjunction with this plat for limitations on the maintenance and use of the wetland and wetland buffer areas identified on the face of this Plat. (See Condition of Approval D-5)

Finding 3

The applicant proposes to fill 0.07 acres (3,225 sq. ft.) of wetland and create 0.09 (4,039 sq. ft.) acres of new Category 4 wetlands adjacent to the existing wetland (see Figure 4, Exhibit 8). The proposed wetland fill complies with the 1.25:1 replacement ratio required under CCC 40.450.040 (D) (2) (b).

Finding 4

The applicant has submitted an addendum to the wetland buffer mitigation plan which proposes to replace a portion of the proposed buffer averaging compensation area with a wildlife habitat enhancement to the wetland and enhancement of a portion of the wetland buffer. These reductions provide equivalent replacement for 3, 987 SF of Type D buffer and therefore comply with CCCC 40.540.040(C). The addendum eliminates the need for the proposed condition A-4 of the Staff Report. See Exhibit 22.

Finding 5

The proposed stormwater facility located within the wetland buffer must comply with the standards in CCC 40.450.040 (C) (4). The Final Enhancement/Mitigation plan and Engineering Construction plans must demonstrate that the facility will meet these standards. (See Condition of Approval A -4)

Conclusion:

Based upon the development site characteristics and the proposed development plan, the proposed preliminary land division and preliminary wetland permit comply with the requirements of the Wetland Protection Ordinance, PROVIDED that conditions of approval A-2 through A-5, D-5 and E-6 are met.

TRANSPORTATION CONCURRENCY:

Finding 1

This 7-lot subdivision does not trigger compliance with the applicable sections of the Transportation Concurrency Ordinance. There was concern expressed by neighbors relating to Traffic on 58th Street. As the letter asserts drivers on that street tend to drive fast. Some drivers do not observe the 30-mile per hour posted speed limit on NE 58th Street, thereby creating safety problems for pedestrians and other drivers. The neighbors need to organize and work with the Sheriff's Department to monitor and enforce traffic flow and the posted speed limit on NE 58th Street.

TRANSPORTATION:

Circulation Plan

Finding 1

The applicant is proposing a private cul-de-sac road between NE 64th Avenue and NE 66th Avenue. Staff finds that this proposed private road would be an acceptable access which will service the interior of this project. There are constraints that keep this roadway from circulation to the east and therefore staff finds that this proposal complies with the standard.

Roads

Finding 2

Mr. and Mrs. Lintz's the private driveway may have been raised with some fill materials to raise the driveway. This action impacted the neighbors residing at 6416 NE 58th Street on the eastern section of their house. Engineering Services will require that the street be properly designed and constructed so that when the construction is completed, the neighbors will enjoy the same access rights that they hitherto, had enjoyed. See Condition of Approval a -6)

NE 58th Street is classified as a 2-lane Collector (C-2). The minimum frontage improvements and dedication along this roadway in accordance with CCC 40.350, Standard Drawing #12, include:

- A minimum half-width right-of-way of 30 feet.
- A minimum half-width roadway of 19 feet.
- Curb, gutter and a minimum 6 foot wide detached sidewalk
- Taper to the east and west along NE 58th Street to the private road

The project shall dedicate the required right-of-way in addition to the required intersection improvements. (See Condition of Approval a - 5)

Finding 3

The applicant proposes a north/south private cul-de-sac road to access this project from NE 58th Street. The minimum improvements and easements in accordance with CCC 40.350.030.B.10 includes:

- A minimum curb to curb and roadway width of 20 feet
- A 5-foot wide pedestrian public access easement
- No parking allowed on roadway widths of 20 feet

The project shall provide easements in addition to the required road improvements. As discussed in the Adverse Possession section, the applicant will have to show that he has sufficient legal control of his easement to provide an access road that meets these dimensions. (Condition of Approval a - 6)

Joint Driveways

Finding 4

A maximum of three legal lots may use a joint driveway to access a public or private road. Lots 1, 2 & 3 are serviced from a joint driveway; therefore it complies with the standard.

Road Modifications

Finding 5

A private road is being proposed to be constructed in place of an existing driveway. In order to construct this private road, it creates a spacing concern with driveways along NE 58th Street which is a collector roadway. The applicant has submitted a road modification EVR 2004-00092 requesting approval of spacing issues along NE 58th Street with the existing driveways

on each side of the proposed private road. (Exhibit 24). In Exhibit 28 Mr. Carlson recommends approval of the requested road modification to Mr. Drinkwater because:

1. The sole access to this property is by an existing 12' wide driveway within a 20' wide "flag" strip and an existing 20' access easement which parallels the flag lot on adjacent properties.
2. There is no alternative location for access of this proposed subdivision due to private ownership and wetland areas.
2. The neighbor to the west has been unwilling to let the applicant close his driveway and relocate it so that they could take access from the proposed private road. (See condition A-7)

Sight Distances

Finding 6

Staff found that the posted speed along NE 58th Street is 30 MPH. The applicant's engineer, Olson Engineering, submitted a letter dated November 9, 2004 that states that in their evaluation with limited trimming of the existing vegetation which currently intrudes into the right-of-way, a minimum of 300 feet of sight distance can be obtained which meets the requirements of the Clark County Transportation Ordinance Table 40.350.030-11. Staff finds that this complies with the standards. The Examiner accepts said recommendation.

Pedestrian/Bicycle Circulation

Finding 7

All sidewalks, driveway aprons, and road intersections shall comply with the Americans with disabilities act.

Landscape Plan

Finding 8

Landscaping along NE 58th Street, a collector shall comply with Appendix G of the Transportation Standards.

Intersection

Finding 9

This project will be required to install a physical demarcation such as a concrete driveway approach to separate the private roads from NE 58th Street in order to facilitate determination of the ownership and maintenance responsibilities.

Conclusion

Based upon the development site characteristics, the proposed preliminary transportation plan and the requirements of the County's transportation ordinance, the proposed preliminary transportation plan subject conditions A-5 and A-7 is feasible. Therefore, the requirements of the preliminary plan review criteria are satisfied.

STORMWATER:

Applicability

Finding 1

Stormwater and Erosion Control Ordinance CCC 40.380, adopted July 28, 2000, apply to development activities that results in 2,000 square feet or more of new impervious area within the urban area; The platting of single-family residential subdivisions in an urban area; and all land disturbing activities, except those exempted in Section 40. 350.030(B) (4).

This project will create more than 2,000 square feet of new impervious surface, involves platting of single-family residential subdivision, and it is a land disturbing activity not exempted in Section 40. 350.030 (B) (4), Stormwater and Erosion Control Ordinance.

The erosion control ordinance is intended to minimize the potential for erosion and a plan is required for all projects meeting the applicability criteria listed in CCC 40.380.020. This project is subject to the erosion control ordinance.

Stormwater Proposal:

Finding 2

The preliminary stormwater plan proposes a drainage facility to accommodate runoff from proposed impervious surfaces created with this development. The quantity and quality control will be contained in an onsite drainage facility and privately owned and maintained. Maintenance will be performed in accordance with Clark County Public Works guidelines. (See Condition a-8)

Finding 3

The proposed stormwater facility will be located along the west edge of the proposed lots within the wetland buffer in the center of the site. The proposed biofiltration swale is 6 feet wide x 112 feet long with a longitudinal slope of 1%.

The proposed BMP's for this project are Biofiltration Swale and a Detention Pond in accordance with CCC 40.380.

The proposed detention pond has base dimensions of approximately 6.5 – 12 feet long and a volume of approximately 9,245 cubic feet. New impervious area includes approximately 0.35 acres of new roof area, and approximately 0.45 acres of new road, driveways and sidewalks.

Site Conditions and Stormwater Issues:

Finding 4

The on site soils consist of Hillsboro Silt Loam (HIB) on 68% of the site where the lots are being proposed. These soils are classified by AASHTO as A-4 soils. Stormwater and Erosion Control Ordinance 40.380, does not list A-4 Soils as suitable for infiltration. There are slopes on the site from 0% to 15%.

Erosion Control

Finding 5

The erosion control ordinance is intended to minimize the potential for erosion and a plan is required for all projects meeting the applicability criteria listed in CCC 40.380.020.

Flood Control

Finding 6

Portions of the site fall within the 100-year floodplain as indicated on the preliminary plat. This development is subject to the Floodplain Ordinance CCC40.420. See Condition of Approval A-9.

Conclusion

Based upon the development site characteristics, the proposed stormwater plan, the requirements of the County's stormwater ordinance, and findings above, the proposed preliminary stormwater plan is feasible. Therefore, the requirements of the preliminary plan review criteria have been satisfied

FIRE PROTECTION:

Finding 1

This application was reviewed by Tom Scott in the Fire Marshal's Office. Tom can be reached at (360) 397-2375 x4095 or 3323. Information can be faxed to Tom at (360)759-6063. Where there are difficulties in meeting these conditions or if additional information is required, contact Tom in the Fire Marshal's office immediately.

Finding 2

Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. (See condition of approval A-10)

Finding 3

Fire flow in the amount of 1000 gallons per minute supplied at 20 pounds per square inch (psi) for 60 minutes duration is required for this application. Information from the City of Vancouver (Exhibit 6, Tab 11) indicates that the required fire flow is available at the site (see condition of approval A-11)

Finding 4

Fire hydrants are required for this application. The applicant shall provide fire hydrants such that the maximum spacing between hydrants does not exceed 700 feet and such that no lot or parcel is in excess of 500 feet from a hydrant as measured along approved fire apparatus access road. (See condition of approval A-12)

Finding 5

Fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection. The local fire district chief approves the exact locations of fire hydrants. As a condition of

approval, contact the Vancouver Fire Department at 360-696-8166 to arrange for location approval. Provide and maintain a six-foot clear space completely around every fire hydrant. (See condition of approval A-13)

Finding 6

The roadways and turnarounds as indicated in the application shall meet the requirements of the Clark County Road Standard. Provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface and capable of supporting the imposed loads of fire apparatus. (See condition of approval A-14)

Finding 7

Parallel parking is prohibited on streets that are less than twenty-four (24) feet wide. Streets that are less than twenty-four (24) feet wide shall be posted "NO PARKING". (See condition of approval C-1)

Finding 8

The applicant shall comply with the Fire Marshal's requirements consistent with the applicable sections of the Uniform Fire and International Building Codes. (See condition of approval C-2)

WATER & SEWER SERVICES:

Finding 1

The City of Vancouver provides public sewer and water services in the area. The applicant has provided a letter from the City of Vancouver confirming that the services are available to the site (see Exhibit 6, tab 11). The applicant shall provide the necessary improvements and connect each new lot (including the existing dwelling on lots 7) to public water and sewer services provided by the City of Vancouver. (See condition of approval C-3)

Finding 2

Submittal of a "Health Department Evaluation Letter" is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable "Health Department Final Approval Letter" must be submitted, then the Evaluation Letter will specify when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to Occupancy Permit Issuance). The Health Department Evaluation Letter will confirm that the Health Department has conducted an evaluation of the site to determine whether existing wells and/or septic systems are present on the site; and whether any structures on the site are hooked up to public water and/or sewer. The Health Department's Final Approval Letter will confirm that all existing wells and/or septic systems have been properly abandoned, inspected, and approved by the Health Department (if applicable). (See condition of approval E-5).

Other Health Concerns

Finding 3

The house and storage buildings will be retained on Lot 7. If underground storage tanks exist on the property, they must be identified and decommissioned in place consistent with the Uniform Fire Code under permit from the Fire Marshal. Any leaks or contamination must be

reported to Washington State Department of Ecology, and proof of removal or abandonment (of the tank) must be submitted to the Health Department prior to final plat recording. (See condition of approval A-14)

IMPACT FEES:

Finding 1

The site is located in Park Impact Fee (PIF) District 7, Vancouver School District Impact Fee (SIF), and Orchards Traffic Impact Fee (TIF) district. There is one single family dwellings on the proposed Lot 7 that qualifies for impact fees credit, therefore, park, school, and traffic impact fees will be assessed on 6 of the proposed 7 lots in this development.

The following note shall be placed on the final plat stating that:

"In accordance with CCC 40.610, except for Lot 7 that is exempt from impact fees exaction, the park, school, and traffic impact fees for each of the 6 new single-family dwellings in this subdivision are:

\$1,885.00 PIF (made up of \$1,445.00 acquisition fee, and \$440.00 development fee) per new single-family dwelling in Park District 7;

\$1,725.00 SIF per new single-family dwelling in the Vancouver School District; and,

\$1,342.19 TIF per new single-family dwelling in Orchards Traffic Impact fee district.

"The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated [REDACTED], and expiring on [REDACTED]. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedules." (See condition of approval B-1)

SEPA Determination of Non-Significance (DNS):

Clark County, as lead agency for review of this proposal, has determined that this proposal does not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030 (2) (e). This decision was made after review of a completed environmental checklist and other information on file with the County. No appeal has been filed within the comment period.

DECISION

Based upon the proposed plan (identified as Exhibit 5), and the findings and conclusions stated above, the Hearings Examiner APPROVES this request because as proposed, it can comply with the all applicable sections of Clark County Code and RCW 57.110.

Conditions of Approval

A. Conditions that must be met prior to Final Plat approval and recording; or if

improvements are approved by the county for bonding or other secure method, such conditions shall be met prior to issuance of Building Permits per CCC, Sections 12.05A.770(10) & (11) and 13.029.370.

Land Use - Zoning

- A-1 The development shall comply with the applicable density transfer standard regarding the minimum useable lot area, minimum lot depth and minimum lot width. (See Land Use Finding 2)
- A-2 The applicant shall resolve any adverse possession claims resulting from the cyclone fence encroaching onto the access easement prior to final plat recording and provide a curb cut to the northern portion of Marugg property and any other claims which may prevent the applicant from being to provide a private cul-de-sac road with 20 width and a five-foot wide sidewalk. (See Land Use Finding 4/Transportation Finding 3).

Critical Areas - Wetlands

- A-3 Final Wetland Permit approval shall be required (standard wetland permit condition).
- A-4 The Final Enhancement/Mitigation plan and Engineering Construction plans shall clearly demonstrate that the proposed stormwater facility located within the wetland buffer complies with the standards in CCC 40.450.040 (C)(4) (see Wetland Finding #5).

Transportation

- A-5 Construction of frontage improvements shall include a half-width right-of-way of 30 feet; a half-width roadway of 19 feet; curb, gutter and a 6 foot wide detached sidewalk; and a taper to the east and west of the private road along NE 58th Street. (See Transportation Finding #2)
- A-6 Construction of a north/south private cul-de-sac road to access this project from NE 58th Street. The minimum improvements and easements in accordance with CCC 40.350.030.B.10 including:
- A minimum curb to curb and roadway width of 20 feet
 - A 5-foot wide pedestrian public access easement
 - No parking allowed on roadway widths of 20 feet

The project shall provide easements in addition to the required road improvements. Access, including a curb cut shall be provided for the northern portion of 6416 NE 58th Street.

- A-7 A road modification (EVR 2004-00092) for spacing issues of the private road and adjacent driveways along NE 58th Street has been approved. (See Transportation Finding #5)

Stormwater

- A-8 The onsite drainage facility will be privately owned and maintained in accordance with Clark County Guidelines. (See Stormwater Finding #2)
- A-9 A floodplain application will need to be submitted with the final engineering in accordance with the Floodplain Ordinance CCC 40.420. (See Stormwater Finding #6)

Fire Protection

- A-10 Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. (See Fire Protection Finding 2)
- A-11 Fire flow in the amount of 1000 gallons per minute supplied at 20 pounds per square inch (psi) for 60 minutes duration is required for this application. Information from the City of Vancouver (Exhibit 6, Tab 11) indicates that the required fire flow is available at the site (see Fire Protection Finding 3).
- A-12 Fire hydrants are required for this application. The applicant shall provide fire hydrants such that the maximum spacing between hydrants does not exceed 700 feet and such that no lot or parcel is in excess of 500 feet from a hydrant as measured along approved fire apparatus access road. (See Fire Protection Finding 4)
- A-13 Fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection. The local fire district chief approves the exact locations of fire hydrants. As a condition of approval, contact the Vancouver Fire Department at 360-696-8166 to arrange for location approval. Provide and maintain a six-foot clear space completely around every fire hydrant. (See Fire Protection Finding 5)
- A-14 The roadways and turnarounds as indicated in the application shall meet the requirements of the Clark County Road Standard. Provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface and capable of supporting the imposed loads of fire apparatus. (See Fire Protection Finding A-6)

Water and Sewer Services

- A-15 This condition is advisory only: If underground storage tanks exist on the property, they must be identified and decommissioned in place consistent with the Uniform Fire Code under permit from the Fire Marshal. Any leaks or contamination must be reported to Washington State Department of Ecology, and proof of removal or abandonment (of the tank) must be submitted to the Health Department prior to final plat recording. (See Water and Sewer Services Finding 3)

B. Conditions that must be met prior to issuance of Building Permits

Impact Fees

B-1 The following note shall be placed on the final plat stating that:

"In accordance with CCC 40.610, except for Lot 7 that is exempt from impact fees exaction, the park, school, and traffic impact fees for each of the 6 new single-family dwellings in this subdivision are:

1. \$1,885.00 PIF (made up of \$1,445.00 acquisition fee, and \$440.00 development fee) per new single-family dwelling in Park District 7;
2. \$1,725.00 SIF per new single-family dwelling in the Vancouver School District; and,
3. \$1,342.19 TIF per new single-family dwelling in Orchards Traffic Impact fee district.

"The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated [REDACTED], and expiring on [REDACTED]. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedules." (See Impact Fees Finding 1)

C. Conditions that must be met prior to issuance of Occupancy Permits

Fire Protection

C-1 Parallel parking is prohibited on streets that are less than twenty-four (24) feet wide. Streets that are less than twenty-four (24) feet wide shall be posted "NO PARKING". (Fire Protection Finding 7)

C-2 The applicant shall comply with the Fire Marshal's requirements consistent with the applicable sections of the Uniform Fire and Uniform Building Codes. (See Fire Protection Finding 8)

Water & Sewer Services

C-2 The applicant shall provide the necessary improvements and connect each new lot and the existing dwelling on Lot 7 to public water and sewer services provided by the City of Vancouver. (See Water & Sewer Finding 1)

D. Notes Required on Final Plat

D-1 Land Use - Zoning

A development proposal on Lot 7 that involves land division shall:

"Preclude the use of Residential In-Fill standards, CCC 40.260.110 because Lot 7 created by Lintz subdivision after October 2, 2002." (See Land Use Finding 2)

D-2 A development proposal on Lot 7 that involves land division shall:

“Preclude the use of the provisions of CCC 40.200.050 (Exceptions to lot sizes).” (See Land Use Finding 2)

- D-3 A recorded covenant shall be placed on the wetland and buffers from which density is being transferred, prohibiting any development of these areas in perpetuity, CCC 40.220.010 (5) (b) (6). (See Land Use Finding 2)

D-4 **Archaeological:**

"If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."

D-5 **Wetland Covenants:**

"Clark County Wetland Protection Ordinance (Clark County Code Chapter 13.36) requires wetlands and wetland buffers to be maintained in a natural state. Refer to the Conservation Covenant recorded in conjunction with this plat for limitations on the maintenance and use of the wetland and wetland buffer areas identified on the face of this Plat." (See Critical Areas Finding)

D-6 **Mobile Homes:**

"The placement of mobile homes is prohibited."

D-7 **Impact Fees:**

"In accordance with CCC 18.65, except for Lot 7, designated on the final plat as waived, the Park, School and Traffic Impact Fees for each of the remaining 6 new dwellings in this subdivision are: \$1,885.00 (\$1,445.00 - Acquisition; \$440.00 - Development for Park District 7), \$1,725.00 (Vancouver School District), and \$1,342.19 (Orchards TIF district), respectively. The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated [REDACTED], and expiring on [REDACTED]. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedule."

D-8 **Utilities:**

"An easement is hereby reserved under and upon the exterior six (6) feet at the front boundary lines of all lots for the installation, construction, renewing, operating and maintaining electric, telephone, TV, cable, water and sanitary sewer services. Also, a sidewalk easement, as necessary to comply with ADA slope requirements, shall be reserved upon the exterior six (6) feet along the front boundary lines of all lots adjacent to public streets."

D-9 **Critical Aquifer Recharge Areas:**

"The dumping of chemicals into the groundwater and the use of excessive fertilizers and pesticides shall be avoided. Homeowners are encouraged to

contact the State Wellhead Protection program at (206) 586-9041 or the Washington State Department of Ecology at 800-RECYCLE for more information on groundwater / drinking supply protection."

D-10 Erosion Control:

"Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."

D-11 Driveways:

"All residential driveway approaches entering public roads are required to comply with CCC 40.350."

D-12 Private Roads:

"Clark County has no responsibility to improve or maintain the private roads contained within or private roads providing access to the property described in this plat. Any private access street shall remain a private street unless it is upgraded to public street standards at the expense of the developer or adjoining lot owners to include hard surface paving and is accepted by the County for public ownership and maintenance."

D-18 Privately Owned Stormwater Facilities:

"The following party(s) are responsible for long-term maintenance of the privately owned stormwater facilities: ____."

E. Standard Conditions

This development proposal shall conform to all applicable sections of the Clark County Code. The following conditions shall also apply:

Land Division:

- E-1 Within 5 years of preliminary plan approval, a Fully Complete application for Final Plat review shall be submitted.
- E-2 Prior to recording the final plat, the applicant shall submit a copy of the approved landscape plan(s) for any public right-of-way (if applicable) with a letter signed and stamped by a landscape architect licensed in the state of Washington certifying that the landscape and irrigation (if any) have been installed in accordance with the attached approved plan(s) and verifying that any plant substitutions are comparable to the approved plantings and suitable for the site.

Final Construction Plan Review:

- E-3 Prior to construction, the applicant shall submit and obtain county approval of a final stormwater plan designed in conformance to CCC 40.380.
- E-4 Prior to construction, the applicant shall submit and obtain county approval of a final

transportation design in conformance to CCC 40.350.

Water Wells and Septic Systems:

E-5 Submittal of a “Health Department Evaluation Letter” is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable “Health Department Well/Septic Abandonment Letter” must be submitted, then the Evaluation Letter will specify when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to the Issuance of an Occupancy Permit).

E-6 Wetlands:

The requirements of CCC Section 40.450.030 (E) (4) shall apply even if no impacts are proposed. These requirements include:

- A) Demarcation of wetland and/or buffer boundaries established prior to, and maintained during construction (i.e. sediment fence;
- B) Permanent physical demarcation of the boundaries in a manner approved by the Development Services Manager (i.e. fencing, hedgerows, berms etc.) and posting of approved signage on each lot or every 100 ft of the boundary, whichever is less;
- C) Recording a conservation covenant with the County Auditor that runs with the land and requires that the wetlands and buffers remain in natural state; and,
- D) Showing the wetland and buffer boundaries on the face of the Final Plat and including a note that refers to the separately recorded conservation covenant.

E-7 Pre-Construction Conference:

Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.

E-8 Erosion Control:

Prior to construction, the applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 40.380.

E-9 Erosion Control:

For land divisions, a copy of the approved erosion control plan shall be submitted to the Chief Building Official prior to final plat recording.

E-10 Erosion Control:

Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.

E-11 Erosion Control:

Erosion control facilities shall not be removed without County approval.

E-12 Excavation and Grading:

Excavation and/or grading associated with this project shall comply with CCC 14.040.020, the Clark County Building Code. The code and this review adopt by reference Appendix Chapter J of the 2003 International Building Code. Provisions of Appendix Chapter J apply to all grading activities except those exempted in Section J103.2, as amended by CCC 14.05.9000.J103.2.

E-13 Excavation and Grading:

Site excavation/grading shall be accomplished, and drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.

E-14 Stormwater:

Prior to construction, the applicant shall submit and obtain County approval of a final stormwater plan designed in conformance to CCC 40.380.

E-14 Transportation:

Prior to construction, the applicant shall submit and obtain County approval of a final transportation design in conformance to CCC 40.350.

Dated this _____ day of December, 2004

**J. Richard Forester
Hearing Examiner**

NOTE: *Only the decision and the condition of approval are binding on the applicant, owner or subsequent developer of the subject property as a result of this order. Other parts of the final order are explanatory, illustrative and/or descriptive. There may be requirements of local, state, or federal law, or requirements which reflect the intent of the applicant, the county staff, or the Hearings Examiner, but they are not binding on the applicant as a result of the final order unless included as a condition.*

An **appeal** of any aspect of the Hearing Examiner's decision, except the SEPA determination, may be appealed to the Board of County Commissioners only by a party of record. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The appeal shall be filed with the Board of County Commissioners, 1300 Franklin Street, Vancouver, Washington, 98668, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record.

Any appeal of the final land use decisions shall be in writing and contain the following:

1. The case number designated by the County and the name of the applicant;
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 40.510.030 (H) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager. All contact with the Development Services Manager regarding the petition, including notice, shall be with this contact person;
3. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied, on to prove the error; and,
4. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal also must explain why such evidence should be considered, based on the criteria in subsection 40.510.030(H)(3)(b);
5. A check in the amount of \$279.00 (made payable to the Clark County Board of County Commissioners).